IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

COMPANY PETITION No 147 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

RESERVE BANK OF INDIA

Versus

PIRAMAL FINANCIAL SERVICES LTD.

Appearance:

MR AMAR N BHATT for Petitioner

MR BHARAT R PANDYA for Respondent No. 1

CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 20/03/2001

ORAL JUDGEMENT

1. The petitioner Reserve Bank of India had filed winding up petition against M/s. Piramal Financial Services Limited (hereinafter referred to as `the respondent Company' which is also Non-Banking Financial Institution) under Section 45MC of the Reserve Bank of India Act, 1934 (hereinafter referred to as `RBI Act'). The said petition was filed on 9.5.2000 and this Court had by order dated 10.5.2000 appointed the Official Liquidator attached to this Court as Provisional Liquidator and further passed an ex-parte ad-interim injunction restraining the respondents, their agents from encumbering, transferring, alienating and dispossessing

of any of the assets of the respondent Company.

2. Being aggrieved and dissatisfied with the aforesaid order, the respondent Company preferred O.J. appeal before the Division Bench of this Court and the Division Bench of this Court by its order dated 12.6.2000 was pleased to dismiss the appeal.

3. Thereafter the matter was heard and this Court by its order dated 20.10.2000 pleased to admit the matter and directed Official Liquidator attached to this Court should be appointed as Provisional Liquidator and confirmed the order dated 10.5.2000. The Court ordered for constitution of committee and also directed that the committee may be constituted and will prepare inventories of the properties of the respondent and directed to place a detail report in this behalf.

4. Thereafter, RBI filed a Company Application No.401 of 2000 somewhere on 23rd November, 2000, and prayed for modification and review of the order dated 20.10.2000.

5. This matter was again heard and ultimately this Court by its order dated 30.11.2000 has modified the earlier order dated 20.10.2000. In para 5 this Court has modified the earlier order as under:

"After going through the application, I modify para 13.2 of the order and pass the following order:

(a) Reserve Bank of India, the applicant, shall appoint a practising Chartered Accountant within two weeks from today. The Official Liquidator shall associate with the Chartered Accountant in this behalf.

(b) At the outset the Official Liquidator shall prepare an inventory of all the movable and immovable properties belonging to the respondent Company and/or lying in the premises rented or belonging to the respondent Company.

(c) The Committee of Chartered Accountant along with the Official Liquidator shall prepare complete inventories of the record of the Company.

(d) the Chartered Accountant along with the Official Liquidator shall place before the court a detailed report prepared by them within four weeks from today.

(e) the Chartered Accountant along with the Official Liquidator would suggest whether it is possible to consider and implement any viable or workable scheme by which the Company could revive its business and provide modes of repayment of the secured and unsecured creditors of the Company simultaneously."

6. Thereafter the Company Application No.401 of 2000 was heard at length and ultimately this Court by its order dated 22.12.2000 pleased to pass following order as under:

"I therefore order that the advertisement be published in two leading daily newspapers, namely, Sandesh (Ahmedabad Edition) and Indian Express (Ahmedabad Edition) and also in Government Gazette fixing final hearing of the matter on 29.1.2001."

6.1 This Court further passed an order on 22.12.2000 which reads as under:

"I have already pronounced the judgment today and order for advertisement be published in two leading daily newspapers, namely, Sandesh (Ahmedabad Edition) and Indian Express (Ahmedabad Edition) and also in Government Gazette fixing for final hearing of the matter on 29.1.2001. After pronouncement of the judgment, Mr.Bharat Pandya, learned counsel for the respondent Company prays that the implementation and Execution of this order be stayed for two weeks. Mr.Amar Bhatt learned counsel for the petitioner has strongly objected to the same. However, in the interest of justice, stay of the order is granted upto 9th January, 2001."

7. Being aggrieved and dissatisfied with the aforesaid order, the respondent Company filed O.J.Appeal being O.J.Appeal No.1 of 2001 before the Division Bench of this Court. The Division Bench of this Court (Coram: Hon'ble Chief Justice D.M.Dharmadhikari & P.B.Majmudar,

J.) by its judgment and order dated 14th February, 2001, pleased to dismiss the application. However, in its operative order the Division Bench has observed as under:

> "We would, however, like to make it clear that after advertisement of the petition and after hearing all creditors, secured and unsecured as also all parties associated with the company, it would open to the learned Company Judge to decide whether the order of winding up of the company should be passed or not."

8. Thereafter on 17.2.2001 this Court passed further order for advertisement fixing the date of hearing as 20th March, 2001.

9. Pursuant to aforesaid order of this Court, the petitioner - RBI has advertised the winding up petition in Sandesh (Ahmedabad Edition) on 25.2.2001, in Indian Express (Ahmedabad Edition) on 26.2.2001 and the Government Gazette published on 1.3.2001 on page 147 of the Gazette.

10. The learned counsel for the petitioner has also filed affidavit of Shri R.M.Dwivedi, Deputy General Manager, Department of Non-Banking Supervision of dated 7.3.2001 by which all the three advertisements annexed to the petition.

11. Inspite of the aforesaid advertisements, No Secured or Unsecured Creditors or any parties have come forward before this Court objecting the winding up petition in this behalf. No other parties have come forward for objecting to this winding up petition. It also appears that one Hemant Babubhai Shah has filed one Company Application No.77 of 2001 in Company Petition No.147 of 2000 on 16.3.2001. He has filed the said application supporting the main petition and also prayed that respondent Piramal Financial Services Ltd. may be ordered to be wound up.

12. One Rajesh Shah has filed Company Application No.44/2001 with several prayers but material prayer reads as under:

> "The applicant Chartered Accountant be included, depositors be inducted in the Committee which has been constituted by this Court and to lodge prosecution against the guilty persons"

13. In view of the aforesaid circumstances of this

case, I am satisfied that the respondent Company is unable to pay its debts and I am of the view that it is just and equitable that respondent Company to be wound up. The respondent-Company is unable to pay its current demand and there is commercial insolvency on the part of the respondent company. The respondent company or any other secured creditors or unsecured creditors have not come forward to oppose this winding up petition.

14. I have been informed that the RBI has appointed Kantilal & Company as Chartered Accountant and said Chartered Accountant Firm has been associated with the Official Liquidator and I have also been informed that the Official Liquidator is working with the Chartered Accountant in this behalf. Pursuant to the direction of this Court's order dated 30.11.2000, I also directed the Chartered Accountant Kantilal & Company and Official Liquidator to comply with the direction contained in the said order and report to this Court latest by 30th April, 2001. I also directed to Rajesh Shah applicant in Company Application No.44/2000 to render his assistance to the Committee of the Chartered Accountant and Official Liquidator in implementing the direction contained in my earlier order dated 30.11.2000.

15. The Official Liquidator has also filed his report dated 23rd January, 2001, in which he has prayed that to permit the Official Liquidator to break open the locks applied at Registered Office of Company so that inventories of assets of Company can be prepared as per orders of this Court dated 30.11.2000.

16. Pursuant to that Judges Summons this Court had already passed an order dated 17.2.2001 and directed the Official Liquidator to break open the locks applied at Regd. Office of Company so that inventories of assets of company can be prepared as per the order dated 30.11.2000. The Official Liquidator is also present and he has also stated that pursuant to this Court's order dated 17.2.2001, the Official Liquidator alongwith Chartered Accountant has progressed however the work entrusted by this Court is not completed. I hope and trust that both the Official Liquidator and Chartered Accountant will try to expedite the work and will try to finish the work by 30th April, 2001 in this behalf.

16.1 The Official Liquidator is requested to file interim report latest by 10th April, 2001, and the matter may be placed for hearing on 12th April, 2001.

16.2 I, therefore, ordered the wind up of the

respondent Company in this behalf. I also ordered the Provisional Liquidator to be appointed as a Official Liquidator and carry out all functions pursuant to the provisions of the Companies Act.

In view of the above, the Company Petition stands disposed of accordingly.

(K.M. Mehta, J.)

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